

## Message Text

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ORIGIN L-02

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DRAFTED BY L/M:JABOYD:EJS

APPROVED BY L/M:KEMALMBORG

ARA/BR: R. ELSE

ARA/EX MR. LINVILLE

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R 100020Z MAY 75

FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

LIMITED OFFICIAL USE STATE 109306

E.O. 11652 N/A

TAGS:AFSP BR

SUBJECT:POSSIBLE WAIVER OF IMMUNITY BY DEPENDENTS

REF: A) BRASILIA 2317; B) STATE 75757; C) BRASILIA 2516;

D) BRASILIA 2973

1. EMBASSY REQUESTED FAVORABLE REVIEW OF WAIVER OF IMMUNITY OF REQUEST ON PART OF MRS. FANCHON SILBERSTEIN, MRS. SIDNEY D. HEFLIN, MRS. JUDY MILLER ON BASIS OF INFORMATION PROVIDED BY OFFICE OF PROTOCOL OF GOB TO EFFECT THAT IN ORDER FOR DEPENDENTS OF AMERICAN EMPLOYEES TO WORK FOR COMPENSATION WITHIN THE ECONOMY OF BRAZIL IT IS NECESSARY TO CHANGE THE ORIGINAL VISA IN THEIR PASSPORT TO A REGULAR VISA AND TO WAIVE THEIR DIPLOMATIC IMMUNITY. DEPARTMENT REQUESTS EMBASSY TO APPROACH GOB WITH LIMITED WAIVER OF IMMUNITY ALONG WITH STATEMENT OF POLICY CONCERNING WAIVER AS OUTLINED BELOW.

2. ARTICLE 31.1.(C) OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS TO WHICH BOTH USA AND GOB ARE PARTIES  
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PROVIDES THAT A DIPLOMATIC AGENT SHALL ENJOY IMMUNITY FROM THE CRIMINAL JURISDICTION OF THE RECEIVING STATE IN ALL CASES AND ALSO IMMUNITY FROM CIVIL AND ADMINISTRATIVE JURISDICTION EXCEPT IN CASE OF AN ACTION

RELATING TO ANY PROFESSIONAL OR COMMERCIAL ACTIVITY EXERCISED BY THE DIPLOMATIC AGENT IN THE RECEIVING STATE OUTSIDE HIS OFFICIAL FUNCTIONS. ARTICLE 37.1 PROVIDES

THAT THE MEMBERS OF THE FAMILY OF A DIPLOMATIC AGENT SHALL ENJOY THE PRIVILEGES AND IMMUNITIES SPECIFIED IN ARTICLE 31. ARTICLE 32.1 PROVIDES THAT THE IMMUNITY FROM JURISDICTION OF DIPLOMATIC AGENTS AND OF PERSONS ENJOYING IMMUNITY UNDER ARTICLE 37 MAY BE WAIVED BY THE SENDING STATE.

3. DEPARTMENTAL POLICY, WHICH IS CURRENTLY UNDER REVIEW, IS NOT TO APPROVE GENERAL WAIVER OF IMMUNITY FOR DIPLOMATIC DEPENDENTS. WITH REGARD CIVIL AND ADMINISTRATIVE REMEDIES SUCH WAIVER IS UNNECESSARY SINCE DIPLOMATIC AGENTS AND MEMBERS OF HIS FAMILY HAVE NO IMMUNITY WITH REGARD TO OUTSIDE PROFESSIONAL AND COMMERCIAL ACTIVITIES SUCH AS THOSE WHICH THE THREE NAMED PERSONS SEEK TO PERFORM AS OUTLINED IN REFTELS A, C, AND D. IF A CRIMINAL ACTION WERE TO ARISE FROM

SUCH PROFESSIONAL ACTIVITIES, DEPARTMENTAL POLICY IS TO CONSIDER WAIVER ON A CASE BY CASE BASIS.

4. DEPT REALIZES THAT ABOVE MAY NOT MEET REQUEST OF GOB WHICH APPEARS TO HAVE ASKED FOR COMPLETE WAIVER OF IMMUNITY AT THIS TIME. DEPT CAN ONLY REPLY THAT USG DOES NOT REQUIRE COMPLETE WAIVER OF IMMUNITY AND NEW VISA FOR DEPENDENTS OF DIPLOMATS ASSIGNED TO US TO ENGAGE IN CERTAIN PROFESSIONAL ACTIVITY OUTSIDE OFFICIAL FUNCTIONS.

5. DEPT REQUESTS EMBASSY TO APPROACH GOB ON BASIS OF EXISTING LIMITATIONS ON CIVIL IMMUNITY CONTAINED IN ARTICLE 31 OF VIENNA CONVENTION AND STATEMENT OF

GENERAL POLICY CONCERNING USE OF ARTICLE 32 AS DESCRIBED  
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ABOVE. IF EMBASSY IS NOT SUCCESSFUL, RESPOND WITH REACTION OF GOB SO THAT DEPT CAN CONSIDER EMBASSY'S RESPONSE IN CONTEXT OF POLICY REVIEW OF THIS QUESTION. KISSINGER

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**TAGS:** AFSP BR  
**To:** BRASILIA INFO RIO DE JANEIRO  
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